



**Senate Fiscal Agency**  
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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bills 1036 and 1037 (as enrolled)  
Senate Bills 1039 through 1047 (as enrolled)  
Senate Bill 1052 (as enrolled)

**1996**

Senate Bill 1054 (as enrolled)  
Senate Bill 1055 (as enrolled)

Sponsor: Senator Joel D. Gougeon (Senate Bills 1036 and 1039)  
Senator Bill Schuette (Senate Bills 1037 and 1047) Senator  
William Van Regenmorter (Senate Bill 1052) Senator  
Robert Geake (Senate Bills 1040, 1041, and 1046) Senator  
Mike Rogers (Senate Bills 1042-1045)  
Senator Philip E. Hoffman (Senate Bill 1054)  
Senator Glenn D. Steil (Senate Bill 1055)

Senate Committee: Judiciary  
House Committee: Judiciary and Civil Rights

Date Completed: 6-10-97

**RATIONALE**

Michigan's court system includes three different trial courts--the circuit, probate, and district courts--each with separate jurisdictional areas. While the circuit and probate courts themselves are established in the State Constitution, and the Constitution allows the Legislature to establish courts of limited jurisdiction (e.g., district courts), the jurisdiction of each court is specified in statute, and each trial court has jurisdiction over some family-related issues. For instance, the Revised Judicature Act gives the probate court jurisdiction over adoption, name change, juvenile delinquency, and abuse and neglect cases, while the circuit court oversees divorce and custody issues and the district court handles domestic violence personal protection orders. Some people believe that, to make the courts more accessible and less confusing and intimidating to the average citizen, a separate and distinct division of the circuit court should have jurisdiction over all family-related legal matters.

**CONTENT**

**Senate Bill 1052 amended the Revised Judicature Act (RJA) to create the "family division of circuit court" (family court) and establish its jurisdiction, as well as make**

**PUBLIC ACTS 408 and 409 of 1996**  
**PUBLIC ACTS 410 through 418 of 1996**  
**PUBLIC ACT 388 of**

**PUBLIC ACT 402 of 1996**  
**PUBLIC ACT 389 of 1996**

**various revisions to sections amended by Public Act 374 of 1996 regarding trial court operations, court personnel, and judges' salaries. Senate Bills 1036 through 1047 amended various acts to replace certain references to the probate court with references to the family court and include the family court in certain definitions regarding courts' jurisdiction. Senate Bill 1054 includes courts within certain budgeting requirements for local units of government. Senate Bill 1055 provides for the continuation in the State Employees Retirement System of employees performing services in trial courts who were transferred from State employment to county or city employment.**

Senate Bills 1036 through 1047 were tie-barred to Senate Bill 1052 and will take effect on January 1, 1998.

Provisions of Senate Bill 1052 dealing with all of the following took effect on October 1, 1996:

- Disbursement of money in the Court Equity Fund for the operations of trial courts throughout Michigan.
- Assignment of judges to other courts.

- Protected rights and benefits of court employees.
- Development of a family court plan in each judicial circuit.
- Continuation of State payroll services for court employees transferred from State employment to county or city employment.

Provisions of Senate Bill 1052 dealing with the transfer of judgeships and employees from the Detroit Recorder's Court to the Third Circuit Court will take effect on October 1, 1997.

Provisions of Senate Bill 1052 dealing with all of the following will take effect on January 1, 1998.

- Circuit, probate, and district court jurisdiction.
- The establishment and operation of the family division of circuit court.
- Circuit, probate, and district judges' salaries.
- Appeals from probate court.
- Court session locations.
- District court fees.
- Court jurisdiction over civil infractions.

#### **Senate Bill 1036**

The bill amended the Revised Probate Code to replace references to the juvenile division of the probate court (juvenile court) and the Department of Social Services (DSS) with references to the family court and the Family Independence Agency (FIA, which replaced the DSS) in provisions dealing with the termination of guardianships.

#### **Senate Bill 1037**

The bill amended Chapters X, XI, and XIIa of Public Act 288 of 1939 to replace certain references to the probate court and the DSS with references to the family court and the FIA. Chapter X of Public Act 288 is the Michigan Adoption Code, Chapter XI deals with legal name changes, and Chapter XIIa is the juvenile code. The bill transfers proceedings dealing with adoption, name change, and juvenile delinquency and abuse and neglect from the probate court to the family court.

In addition, the juvenile code provides for the establishment of a juvenile detention home as an agency of the juvenile court and allows the juvenile court judge to appoint a superintendent and other necessary employees, who must receive compensation from the county. The bill provides that a detention home is an agency of the county,

rather than of the court. Under the bill, a juvenile detention home must be operated under the direction of the county board of commissioners or, in a county that has an elected county executive, under the direction of the executive. A different method for directing a detention home's operation may be agreed to, however, by the chief judge of the circuit court and the board of commissioners or executive.

#### **Senate Bill 1039**

The bill amended Public Act 271 of 1925 (which provides for the commitment to State institutions of certain children incapable of adoption due to mental or physical disability or for any other reason) to replace references to the probate court and the DSS with references to the family court and the FIA.

#### **Senate Bill 1040**

The bill amended Public Act 137 of 1921 (which authorizes counties to contract with State-licensed agencies, institutions, and hospitals for the aid, care, support, maintenance, treatment, cure, or relief of children) to replace references to the probate court with references to the family court. The bill also replaces references to the "State Board of Corrections and Charities" with references to the Department of Consumer and Industry Services.

The bill repeals a section of Public Act 137 specifying that the Act may not be considered to repeal any existing power of the probate court or a probate judge (MCL 722.505).

#### **Senate Bill 1041**

The bill amended the emancipation of minors Act to replace references to the probate court with references to the family court. The bill also provides that, if an emancipation order is entered by the probate court before January 1, 1998, the parent or minor may petition the family court in the county in which the order was entered to rescind the order.

#### **Senate Bill 1042**

The bill amended Public Act 84 of 1949 (which provides for the transfer of inmates of certain State institutions and agencies to other State institutions and agencies for the purpose of care and training) to make the Act applicable to persons committed by the probate court, before January 1, 1998; the

family court, on or after January 1, 1998; or a court of general criminal jurisdiction.

Under Public Act 84, a person committed by the probate court or a court of general criminal jurisdiction to a State institution or agency authorized to receive juveniles under the discretion of the Department of Mental Health (DMH), the Department of Corrections (DOC), or the DSS for the purpose of treatment and/or training may be transferred from that institution to any other State institution or agency, if it appears to the institution's superintendent that the person will substantially benefit and that the interests of the person and the State will be served by the transfer. The bill refers to institutions authorized to receive juveniles under the discretion of the former DMH, the Department of Community Health (DCH, which now includes the DMH), the DOC, the former DSS, or the FIA.

#### **Senate Bill 1043**

The bill amended Public Act 214 of 1963, which authorizes the establishment of regional facilities for the diagnosis and custody of delinquent and neglected minors, to replace references to the probate court and the DSS with references to the family court and the FIA.

#### **Senate Bill 1044**

The bill amended the Juvenile Diversion Act to specify that, for purposes of the Act, "court" means the family court, rather than the juvenile court.

#### **Senate Bill 1045**

The bill amended the Juvenile Facilities Act to specify that "juvenile" means a person within the jurisdiction of the family court, rather than the juvenile court, under the juvenile code; "department" means the FIA, rather than the DSS; and "juvenile facility" means a county facility, institution operated as an agency of the county or the family court, rather than the juvenile court, or a State institution described in the Youth Rehabilitation Services Act.

#### **Senate Bill 1046**

The bill amended the Youth Rehabilitation Services Act to refer to the juvenile court or the family court, with respect to youths committed to State wardship and the distribution of the cost of care of State wards between the State and counties. The bill also refers to the family court,

rather than the juvenile court, for the purpose of provisions governing the release of a youth from State wardship.

#### **Senate Bill 1047**

The bill amended the Code of Criminal Procedure to replace references to the probate court and the DMH with references to the family court and the DCH.

#### **Senate Bill 1052**

##### **Overview**

The bill amended the Revised Judicature Act (RJA) to create the family division of circuit court, and specify the family court's jurisdictional areas. The bill also does all of the following:

- Changes the level of the district court's exclusive jurisdiction in civil action from amounts in controversy that do not exceed \$10,000 to amounts that do not exceed \$25,000, and provides for court fees in cases that involve more than \$10,000.
- Allows the State, upon the request of Detroit or Wayne County, to continue to provide payroll services to former State Judicial Council (SJC) employees, for a limited period.
- Revises the level of probate and district court judges' salaries.
- Provides for excess court fees transmitted to the State Treasurer from the Michigan Judges Retirement System to be included in the Court Equity Fund, which provides State funding to trial courts throughout the State.
- Includes amounts counties received for reimbursement of juror fees in determining the counties' eligibility for and payment from the Hold Harmless Fund.
- Deletes certain provisions pertaining to a judge's additional salary for assignment to another court.
- Authorizes additional judgeships for the Third Circuit Court as a result of the Detroit Recorder's Court's merger with the Third Circuit.
- Specifies that transferred court employees are not subject to residency requirements and that employees' rights and benefits may be altered by employers' benefit plans.
- Revises provisions pertaining to transferred SJC employees' annual leave, and employer-paid retirement contributions.

- Provides for the transfer of county-paid employees serving in the Detroit Recorder's Court to county-paid employment in the Third Circuit Court, effective October 1, 1997.
- Allows the family court to hold sessions at alternative locations.
- Deletes a provision removing juveniles from the district court's jurisdiction over municipal civil infractions.
- Repeals Enacting Section 2 of Public Act 138 of 1994, which called for the repeal, effective January 1, 1997, of the section of the RJA governing the payment of compensation to part-time probate judges in small counties (MCL 600.822).

#### Family Division of Circuit Court

Under the bill, each judicial circuit must have a family division of circuit court. A judge of the family court has the same power and authority as a judge of the circuit court. As with the circuit court, the county clerk is the clerk of the court for the family court. A reference to the former juvenile division of the probate court in any Michigan statute is to be construed to be a reference to the family court.

All of the following must provide assistance to the family court in accordance with that court's jurisdiction:

- The office and facilities of the Friend of the Court.
- The family counseling services created under the Circuit Court Family Counseling Services Act.
- The county juvenile officers and assistant county juvenile officers appointed under Public Act 22 of the Extra Session of 1919.
- All other State and public agencies that provide assistance to families or juveniles.

Family Court Plan. By July 1, 1997, in each judicial circuit, the chief circuit judge and the chief probate judge or judges must enter into an agreement that establishes a plan for how the family court will be operated in that circuit and how the support agencies listed above will be coordinated in order to promote more efficient and effective services to families and individuals. In Wayne County, the agreement must be made by the chief circuit judge, the chief probate judge, and the chief judge of the Detroit Recorder's Court. If an agreement is not entered into before July 1, 1997, in any particular judicial circuit, the Supreme

Court must develop and implement the plan for the circuit.

The plan must provide that the judges assigned to the family court serve in that division for the duration of their current terms unless one or both of the following occur:

- The chief probate judge and the chief circuit judge determine that a change in the caseload of the family court justifies a change in the number of judges assigned to the family court.
- The number of judges assigned to the family court is decreased upon recommendation of the Trial Court Assessment Commission established by Public Act 374 of 1996 (House Bill 5158).

A family court plan may provide that, when a judge's assignment to the family court ends, the judge's pending cases are to be reassigned to the other judge or judges of the family court, or are to be resolved by that judge by temporarily assigning him or her to the family court for that purpose. In addition to the assignment of probate judges to the family court, a plan in a multicounty circuit may provide that a probate judge in one county in the circuit may be assigned, temporarily, to assist a probate judge of another county in the circuit, as needed.

If a probate district includes counties that are in different judicial circuits, the chief judge of each circuit that includes a county in the probate court district and the chief probate judge or judges in the circuit may enter into an agreement that establishes a plan for how the family court will operate in the affected circuits and how the services of support agencies will be coordinated.

A family court plan must be reviewed and revised periodically, as necessary, by the chief circuit judge or judges and the chief probate judge or judges.

Family Court Judges. In each judicial circuit, consistent with the family court plan for that circuit, the chief circuit judge must assign the judge or judges of circuit court and probate court who will serve in the family court. The total number of judges assigned to the family court must reasonably reflect the caseload of that family court. If the caseload is not sufficient to use fully the time of the assigned judge or judges, the chief circuit judge may assign one or more of those judges to assist with the circuit court's caseload.

The Trial Court Assessment Commission must review the number of judges assigned to the family court in each judicial circuit to determine whether the number reasonably reflects that family court's caseload. The Commission must make appropriate recommendations for the continuation of, or change in, the number of judges assigned to each judicial circuit's family court.

If a probate judge assigned to the family court is not licensed to practice law in Michigan, that judge may only be assigned matters that he or she could have heard while sitting as a probate judge before January 1, 1998, and that originated in the county in which he or she was elected as a probate judge.

The Michigan Judicial Institute must provide appropriate training for all probate judges and circuit judges assigned to the family court.

Family Court Jurisdiction. Except as otherwise provided by law, the family court will have sole and exclusive jurisdiction over cases commenced on or after January 1, 1998, that involve the following matters:

- Divorce and ancillary matters as set forth in: the divorce Act (MCL 552.1-552.45); Public Act 259 of 1909, dealing with rights in property (MCL 552.101-552.104); Public Act 52 of 1911, dealing with alimony awarded by an out-of-state court (MCL 552.121-552.155); the Friend of the Court Act (MCL 552.501-552.535); Public Act 299 of 1905, dealing with the name change of a divorced woman (MCL 552.391); Public Act 42 of 1949, dealing with property awards to spouses (MCL 552.401-552.402); the Family Support Act (MCL 552.451-552.459); the Support and Parenting Time Enforcement Act (MCL 552.601-552.650); and the Interstate Income Withholding Act (MCL 552.671-552.685).
- Adoption under the Michigan Adoption Code (MCL 710.1-710.70) and the commitment to State institutions of certain children incapable of adoption due to mental or physical disabilities or any other reason under Public Act 271 of 1925 (MCL 722.531-722.534).
- Name changes under Chapter XI of Public Act 288 of 1939 (MCL 711.1-711.2).
- Juvenile delinquency, and abuse and neglect, under the juvenile code (MCL 712A.1-712A.31).

- The status of minors and their emancipation under the emancipation of minors Act (MCL 722.1-722.6).
- Child custody under the Child Custody Act (MCL 722.21-722.29) and child custody jurisdiction under the RJA (MCL 600.651-600.673).
- Paternity and child support under the Paternity Act (MCL 722.711-722.730).
- Parental consent for abortions performed on unemancipated minors under Public Act 211 of 1990 (MCL 722.901-722.909).
- Child support under the Revised Uniform Reciprocal Enforcement of Support Act (MCL 780.151-780.183).
- Domestic violence and stalking personal protection orders under the RJA (MCL 600.2950 & 600.2950a).

The family court will have ancillary jurisdiction over cases commenced on or after January 1, 1998, that involve guardians and conservators as provided in the Revised Probate Code (MCL 700.401-700.499) or treatment of, or guardianship of, mentally ill or developmentally disabled persons under the Mental Health Code (MCL 330.1001-330.2106).

Family Court Case Assignment. When two or more matters within the jurisdiction of the family court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, must be assigned to the judge to whom the first case was assigned.

A case that was assigned to a probate judge who subsequently is assigned as a judge of the family court, and that is within the family court's jurisdiction, must be assigned to the same judge in his or her capacity as a family court judge. A case that was assigned to a probate judge who subsequently is assigned as a judge of the family court, but that is not within the family court's jurisdiction, must remain in probate court. The chief circuit judge may temporarily assign to probate court the probate judge to whom the case was assigned in probate court, so that he or she can preside over the case until its completion. A case commenced in probate court that is transferred to the family court on January 1, 1998, may be reassigned to a judge of the family court, or the probate judge to whom the case was assigned may be temporarily assigned to the family court to resolve that case.

Family Court Fees. Except as otherwise provided, fees payable in civil actions in circuit court apply to cases in family court.

At the time of commencing an ancillary guardianship or limited guardianship proceeding in the family court, the party commencing the proceeding must pay a \$50 filing fee to the family court. The clerk of the court, by the fifth day of the month following the month in which any fees are collected for an ancillary or limited guardianship proceeding, must transmit to the county treasurer the fees collected in the previous month. Within 15 days after receiving the fees, the treasurer must transmit them to the State Treasurer for deposit in the State Court Fund. A party to an ancillary or limited guardianship proceeding is not required to pay a fee if the party is the Attorney General, Department of Treasury, Family Independence Agency, State Public Administrator, or Administrator of Veterans Affairs of the United States Veterans Administration, or an agency of county government.

A fee may not be charged in the family court for any of the following:

- Commencing an ancillary proceeding under any provision of the Mental Health Code or any provision of the juvenile code.
- Filing an acknowledgment of paternity.
- Filing a motion, petition, account, objection, or claim in an ancillary guardianship or limited guardianship proceeding, if the moving party is the subject of the proceeding.
- An ancillary conservatorship proceeding, if the moving party is the subject of the proceeding, or, in the case of a conservatorship for a minor, for a motion to release restricted funds.

In a proceeding in which the family court has ancillary jurisdiction, the family court must make one certified copy or exemplification of any letter of authority or letter of guardianship and furnish it without charge to the fiduciary or the fiduciary's attorney or guardian or guardian's attorney, upon request. The court, where the order must be entered in the administration of an estate, must deliver to the printer or publisher a certified copy of each order for publication.

Family Court Appeals. The pendency of an appeal from the family court in a matter involving the disposition of a juvenile or, in a case in which the

family court has ancillary jurisdiction, from an order entered pursuant to the Mental Health Code, will not suspend the order unless the court to which the appeal is taken specifically orders the suspension. An application for a delayed appeal from an order of the family court in a matter involving the disposition of a juvenile must be filed within six months after entry of the order.

#### District Court Jurisdiction and Fees

The RJA provides that the district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$10,000. The bill increases that amount to \$25,000.

Under the RJA, before a civil action begins in the district court, the party commencing the action must pay to the court clerk \$52 if the amount in controversy exceeds \$1,750; \$32 if the amount exceeds \$600, but does not exceed \$1,750; and \$17 if the amount does not exceed \$600. Under the bill, the \$52 filing fee will apply if the amount in controversy exceeds \$1,750, but does not exceed \$10,000. The filing fee will be \$100, if the amount in controversy exceeds \$10,000. For each fee collected in cases involving more than \$10,000, the clerk must transmit \$2 to the State Treasurer, to be credited to the Community Dispute Resolution Fund; \$13.50 to the executive secretary of the Judges Retirement System; \$21.50 to the treasurer of the district control unit in which the action was commenced; and the balance to the State Treasurer for deposit in the State Court Fund.

In addition, if the amount in controversy in a civil action exceeds \$10,000, then \$20 must be assessed for all motions filed in that action. For each motion fee collected, the court clerk must transmit \$10 to the State Treasurer for deposit in the State Court Fund and the balance to the treasurer of the district control unit.

#### Payroll Services

The bill provides that, regardless of the employer status of the county-paid employees serving in the Third Circuit Court, or serving in the Detroit Recorder's Court, or of the city-paid employees serving in the 36th District Court as of October 1, 1996, the State may, upon request of the new employer, continue to provide payroll services to those employees. Payroll services may continue for a transition period not to extend beyond January 31, 1997.

If the State provides payroll services, the requesting employer (Wayne County or Detroit) must reimburse the State for its actual expenses. At the discretion of the Department of Management and Budget, the expenses may be offset by payments from the Court Equity Fund and the Hold Harmless Fund, to which Wayne County or Detroit otherwise would be entitled.

#### Probate and District Judges' Salaries

Probate Judges. The RJA specifies that until the salary of a justice of the Supreme Court exceeds \$125,912, each full-time probate judge receives an annual salary of \$104,507, including a minimum annual salary of \$58,783 payable by the State and \$45,724 paid by the county or counties, which the State must reimburse. If the salary of a Supreme Court justice exceeds \$125,912, a full-time probate judge must receive a minimum annual salary of the difference between 83% of a justice's salary and \$45,724, plus an additional salary of \$45,724 from the county or counties. The bill, instead, provides that, until a Supreme Court justice's salary exceeds \$128,538, a full-time probate judge's salary will be \$109,257, including a minimum annual salary of \$63,533 payable by the State and \$45,724 paid by the county or counties, which the State will reimburse. If the salary of a Supreme Court justice exceeds \$128,538, a full-time probate judge will receive a minimum annual salary of the difference between 85% of a justice's salary and \$45,724, plus an additional salary of \$45,724 from the county or counties.

District Judges. The RJA specifies that until the salary of a justice of the Supreme Court exceeds \$125,912, each district judge receives an annual salary of \$104,507, including a minimum annual salary of \$58,783, payable by the State, and \$45,724 paid by the district funding unit or units, which the State must reimburse. If the salary of a Supreme Court justice exceeds \$125,912, a district judge must receive a minimum annual salary of the difference between 83% of a justice's salary and \$45,724, plus an additional salary of \$45,724 from the district funding unit or units. The bill, instead, provides that, until a Supreme Court justice's salary exceeds \$124,413, a district judge's salary will be \$104,507, including a minimum annual salary of \$58,783, payable by the State, and \$45,724 paid by the district funding unit or units, which the State will reimburse. If the salary of a Supreme Court justice exceeds \$124,413, a district judge will receive a minimum annual salary of the difference between 84% of a

justice's salary and \$45,724, plus an additional salary of \$45,724 from the district funding unit or units.

#### Court Equity Fund and Hold Harmless Fund

The bill specifies that excess court fees transmitted to the State Treasurer pursuant to the Judges Retirement Act are included in the Court Equity Fund, which provides State funding to trial courts throughout Michigan. (Enrolled House Bill 6024, which was vetoed by the Governor, would have amended the Judges Retirement Act to require that the executive secretary of the judges retirement system transmit those fees to the Treasurer for deposit in the Court Equity Fund, rather than the Court Fee Fund, and would have repealed the section of the Judges Retirement Act that created the Court Fee Fund.)

The Hold Harmless Fund provides State funding to some counties and cities that will receive less money from the Court Equity Fund under the formula enacted by Public Act 374 of 1996 than they received from the State Court Fund for fiscal year (FY) 1995-96. Under the bill, a county will receive money from the Hold Harmless Fund if its allotment from the Court Equity Fund is less than the amount of money it received from the State Court Fund in FY 1995-96 plus the amount it received from the State for reimbursement of compensation paid to jurors.

#### Judicial Assignment

The RJA authorizes the Supreme Court to assign an elected judge of any court to serve as a judge in any other Michigan court. All assignments and reassignments of cases filed in any court in a county, however, must be made among the judges of that county, unless no trial court judge in the county is qualified and able to undertake a particular case. A judge of one county cannot be assigned to serve as a judge in another county unless no other trial court judge in the county needing assistance is able to render that assistance.

A judge who is assigned to another court must receive as salary for each day he or she serves in the court 1/250 of the amount by which the total annual salary of a judge of the court to which he or she is assigned exceeds his or her annual salary. The additional salary is payable by the county or district control unit or units that have provided an additional salary for the judicial office to which the judge is assigned. An assigned judge also is

entitled to receive actual and necessary expenses for travel, meals, and lodging from the county or district funding unit or units that are responsible for the maintenance and operation of the trial court to which the judge is assigned. The salary and expenses are payable at the same time and in the same manner as provided for the judicial office to which the judge is assigned.

The bill deleted from the RJA's judicial assignment provision a requirement that the same source paying the salary return to the respective counties in which an assigned circuit or probate judge was appointed or elected, or to the respective district control units of the district in which an assigned district judge was appointed or elected, for each day served, 1/250 of the annual additional salary paid by those counties or district control units to the assigned judge. For a reassigned judge of the Detroit Recorder's Court, the deleted provision required that the same source or sources paying the additional salary return to the State, for each day served, 1/250 of the annual additional salary paid to the judge.

#### Additional Judgeships

Public Act 374 of 1996 amended the RJA to merge the Detroit Recorder's Court with the Third Circuit Court on October 1, 1997. The RJA provides that the Third Judicial Circuit has 35 judges and the Detroit Recorder's Court has 29 judges. The bill specifies that, effective October 1, 1997, the Third Circuit will have 29 additional judges.

#### Court Employees

Circuit, Probate, and District Court. The RJA, under provisions added by Public Act 374 of 1996, provides that the county is the employer of circuit and probate court workers and the district funding unit is the employer of district court workers. Public Act 374 provides that, if its implementation requires a transfer of court employees or a change of employers, all employees of the former court employer must be transferred to, and appointed as employees of, the appropriate employer designated under Public Act 374, subject to all rights and benefits they held with the former court employer. That Act also specifies, however, that the protected rights and benefits may be altered by a future collective bargaining agreement. The bill further provides that, for employees not covered by collective bargaining agreements, the protected rights and benefits may be altered by benefit plans as established and adopted by the employer. In addition, the bill specifies that an employee who is

transferred cannot be made subject to any residency requirements by the employer.

Transferred SJC Employees. Public Act 374 abolished the State Judicial Commission, which had operated as the State employer of court employees in the Third Circuit, Recorder's, and 36th District Courts, and transferred those employees either to Wayne County or Detroit. Public Act 374 required that annual leave accumulated by transferred SJC employees before October 1, 1996, but not in excess of 160 hours, be transferred with an employee. The bill retained the requirement that an employee's annual leave be transferred, but deleted the limit of 160 hours of annual leave being transferred.

The Act also requires that the Legislature, by law, provide the transferred SJC employees with an option to receive a cash payment for the value of accumulated annual leave in excess of 160 hours, to be paid over a period of up to two years, or a payment of that amount in the form of deferred compensation. The bill provides, instead, that before January 1, 1997, the State must pay to Wayne County and Detroit the value of annual leave accumulated before October 1, 1996, in excess of 160 hours, for each transferred SJC employee. The value of the accumulated leave time must include the annual payroll factor of 23.63% for FICA and retirement for the State fiscal year beginning October 1, 1995.

Public Act 374 provides that transferred SJC employees will remain members of the State Employees' Retirement System. The bill requires that the new employer of transferred SJC employees submit the reports and contributions required of employers under the State Employees Retirement Act.

Transfer of Recorder's Court Employees to Third Circuit. Public Act 374 transferred to Wayne County the SJC employees serving in the Third Circuit and Recorder's Court, effective October 1, 1996, but abolishes the Detroit Recorder's Court and provides for its merger with the Third Circuit Court, effective October 1, 1997. The bill requires that the county-paid employees serving in the Detroit Recorder's Court as of September 30, 1997, become county-paid employees serving in the Third Circuit Court on October 1, 1997. The bill provides those transferred employees with the same rights and protections offered by Public Act 374 and the bill to other transferred court employees.



Bailiffs. The bill specifies that a bailiff or court officer appointed to serve in the 36th District Court is an employee of the City of Detroit, rather than the SJC, and must be paid by the city, rather than the State. Also, the city, rather than the State, must make the employer contributions to a 36th District Court bailiff's or court officer's retirement system. Copies of the retirement system's actuarial reports must be provided to the city and the State Court Administrator, rather than to a joint legislative committee and the SJC.

#### Family Court Session Locations

The bill allows the family court to hold sessions at any alternative primary location allowed for the probate court under the RJA. The RJA requires a probate judge to hold session of the probate court at the county seat, unless an alternative primary location is designated, and specifies that, subject to the approval of the county board of commissioners and the State Court Administrator, the chief probate judge of a county may designate one or more places in the county where regular session of probate court may be held.

The bill provides that, if the family court has ancillary jurisdiction in a case, a family court judge may hold sessions at the regional diagnostic and treatment center assigned to the court, if sessions are approved by the State Court Administrator. The diagnostic and treatment center must provide an area for court sessions to which the public has access.

The bill also specifies that it does not prohibit a judge from holding a hearing regarding an allegedly legally incapacitated person or an allegedly mentally ill person at any site considered appropriate by the court as provided in the Revised Probate Code (MCL 700.443) or the Mental Health Code (MCL 330.1456). (Under the Revised Probate Code, a person alleged to be legally incapacitated is entitled to be present at a hearing in person and to see or hear all evidence regarding his or her condition. If the person desires to be present at the hearing, all practical steps must be taken to ensure his or her presence, including, if necessary, moving the site of the hearing. The Mental Health Code provides that hearings may be held in quarters that the court directs, either within or outside of the county in which the court has its principal office, in a hospital or other convenient place. Whenever practicable, the court must convene hearings in a hospital.)

#### Municipal Civil Infractions

The RJA grants the district court and any municipal court jurisdiction over municipal civil infractions. If the person cited for a municipal civil infraction is under 17 years of age at the time of the violation, however, the juvenile division of the probate court has jurisdiction over the proceedings and must proceed to hear and dispose of the case under the juvenile code. The bill deleted the provision giving the juvenile court jurisdiction over a person under 17 cited for a municipal civil infraction.

#### Drain Code

The bill specifies that the circuit court has exclusive jurisdiction over condemnation cases commenced under the Drain Code (MCL 280.1-280.630).

#### Senate Bill 1054

The bill amended the Uniform Budgeting and Accounting Act to include courts within the Act's definition of "budgetary center". "Budgetary center" now means a general operating department of a local unit or any other department, institution, court, board, commission, agency, office, program, activity, or function to which money is appropriated by a local unit.

The Act provides for the formulation and establishment of uniform charts of accounts and reports in local units of government, the examination of local units' books and accounts, and annual financial reports from local units.

#### Senate Bill 1055

The bill amended the State Employees' Retirement Act to provide that an individual who was a member of the State Employees' Retirement System (SERS) on September 30, 1996, by virtue of employment by the State Judicial Council, continues to be a member after that date, if both of the following requirements are met:

- He or she is employed by the Wayne County Judicial Council or the Detroit Judicial Council, if those entities are created pursuant to the RJA, or by Wayne County or Detroit, performing judicial duties in the Third Circuit, Recorder's, or 36th District Court.

- His or her employer pays to the SERS an amount based upon the contribution rates determined under the Act, in the manner prescribed by the SERS.

600.151b et al. (S.B. 1052)  
 141.422b (S.B. 1054)  
 38.13 & 38.44a (S.B. 1055)

Under the bill, by January 20, April 20, July 20, and October 20 of each year, the employer must file with the SERS a quarterly affidavit for the preceding three months. The affidavit must certify the aggregate compensation reportable to the SERS under the Act, sources of contributions, and contributions required by law. By October 20 of each year, the employer must file a report with the SERS that includes all of the following information for the preceding 12 months:

- A list of individuals employed by the employer, performing judicial duties in the Third Circuit, Recorder's, or 36th District Court, who had been SERS members on September 30, 1996 and continued to be members after that date.
- The salary paid to each applicable employee.
- The amount of service performed by each applicable employee.
- Any other information the SERS requires for the bill's administration.

If an employer fails to submit a report or contribution, or both, according to the schedule established by the SERS, the employer must pay a late fee. If the employer remits contributions late, the late fee must include interest for each day the remittance is late. The SERS periodically may establish a late fee of at least \$25, and interest charges of at least 6% per year.

The SERS must grant service credit for the time an employee covered by the bill continues to work for Wayne County or Detroit performing judicial duties in the Third Circuit, Recorder's, or 36th District Court. An individual who continues to be a SERS member under the bill is entitled to all of the rights, privileges, and benefits provided by the Act.

- MCL 700.424c (S.B. 1036)  
 710.22 et al. (S.B. 1037)  
 722.531 (S.B. 1039)  
 722.501 & 722.503 (S.B. 1040)  
 722.4 et al. (S.B. 1041)  
 720.601 (S.B. 1042)  
 720.652 & 720.653 (S.B. 1043)  
 722.822 (S.B. 1044)  
 803.222 & 803.224 (S.B. 1045)  
 803.302 et al. (S.B. 1046)  
 761.1 et al. (S.B. 1047)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Under the bills, the family court will have jurisdiction--whether exclusive, concurrent, or ancillary--over all cases involving divorce and related issues, child custody, paternity and family support, juvenile delinquency, child protective proceedings, adoption, mental health, guardianships, and other protective proceedings. This will allow a single court to address all matters relating to the health and welfare of Michigan's families.

To facilitate the most effective and efficient handling of family matters, all cases involving a single family arising within a judicial circuit will be assigned to the same judge, if possible, though the chief judge of the circuit will have some flexibility to provide for exceptions in the assignment of cases. Although Senate Bill 1052 requires that a judge assigned to the family court serve in that division for the duration of his or her term, the chief circuit judge will have the ability to assign family court judges to hear other circuit court matters to assist with the circuit court's caseload.

Although the bill requires each judicial circuit to have a family division in its circuit court, the question of how each family court will be operated will be determined at the local level. Unless the number of judges assigned to a family court is reduced pursuant to a recommendation of the Trial Court Assessment Commission, the chief circuit judge and chief probate judge in each judicial circuit will determine judicial assignment and court operation issues, in the development of the circuit's family court plan.

The specialization of the family court division and flexibility in the assignment of circuit and/or probate judges to hear cases in the new division will make the court system more accessible and understandable to those citizens whose domestic situation demands attention in several different legal areas. Rather than having separate and, perhaps, overlapping proceedings in two or three different trial courts within one judicial circuit, each family will be able to combine the pertinent legal

questions into one concurrent set of proceedings in the same court and, likely, before the same judge. This will make the court system more user-friendly to Michigan citizens and more efficient for those who work in and preside over the courts.

**Response:** The current system is a good one and, generally, works quite well. The perception that families are too often involved in cases in multiple courts at the same time has been exaggerated. On the rare occasions when those problems do arise, the courts can address any scheduling and jurisdictional conflicts administratively.

In addition, according to an article in the October 7, 1996, issue of *Michigan Lawyers Weekly*, the president of the Michigan Judges Association expressed concern that a specialized court will result in a “clubbish” bar and judiciary and “would not foster a kind of court that is open to all practitioners and litigants”.

#### **Opposing Argument**

Although transferring some jurisdictional areas of the probate court to the circuit court might be a good idea, creating a separate court division exclusively for domestic matters is not an effective method of managing a court’s docket. Several problems may arise as a result of the establishment of a family court.

By requiring all cases pertaining to certain matters to be assigned to particular judges, efficient case flow management might be interrupted. According to at least one circuit court chief judge, the best way to administer a court’s workload is to assign cases to the next scheduled judge, who then is responsible for that case through its duration, rather than assigning particular types of cases to particular judges. In addition, a legislative mandate as to how the judiciary administers its caseload assignments raises questions regarding constitutional separation of powers issues.

Another difficulty with establishing a family court division within the circuit court is the effect domestic cases can have on the presiding judge. Divorce and custody cases, for instance, can be very emotional and, reportedly, often take a heavy toll on the judges who preside over them. Consequently, those who sit on the bench may be reluctant to serve in a capacity in which they hear only those types of cases, and those who exclusively perform those duties are likely to be more susceptible to professional burnout. Further, according to testimony before the Senate Judiciary Committee, in some states that have a separate

family court, assignment of judges to that bench is sometimes used as a form of punishment. This can diminish the perceived importance of family-related court proceedings. These kinds of problems are compounded by the requirement in Senate Bill 1052 that a judge assigned to family court serve in that division for the duration of his or her judicial term of office.

Rather than create a separate court division for domestic matters, the bills should simply have expanded the circuit court’s jurisdiction to include those proceedings. The questions of how each circuit administers those cases and assigns judges to preside over them should have been left to each individual circuit’s chief judge and court administrator.

**Response:** Each judicial circuit’s chief judge will have the ability to assign judges to the family court division in a manner in which he or she feels will work best for that court. In addition, regardless of whether designating a separate division causes slight administrative difficulties in some circuits, making the court system less confusing and more user-friendly will benefit the public.

In some circuits, where certain judges reportedly resist handling domestic civil cases, the bills can promote case flow efficiency. Assigning those cases only to judges serving in the family court will free up other judges to handle criminal and other civil cases more expediently. This might diminish courts’ backlogs and better serve the public.

#### **Opposing Argument**

Combining the jurisdiction and operation of different courts might have serious administrative and financial implications. The various courts’ administrative functions, with respect to their employees and people subject to their jurisdiction, will be disrupted and called into question. For instance, it is unclear whether probation officers in the juvenile division of probate court will become employees of the circuit court. There also are concerns about the courts’ infrastructure. In many counties, the probate and circuit courts are physically located in different buildings, with separate courtroom and related facilities. In addition, judges will be taking on cases with new and unfamiliar types of issues to address. With jurisdictional areas being combined into a family division of circuit court, use of facilities, placement of personnel and those conducting court business, and cross-training of judges and court workers will have to be worked out.

**Response:** The creation of the family court and the necessary jurisdictional changes will apply

to cases filed on or after January 1, 1998. This should provide sufficient lead-time to phase-in whatever training, administrative, and logistical concerns might need to be addressed. Also, Senate Bill 1052 requires the Michigan Judicial Institute to provide appropriate training to all judges assigned to the family court. In addition, Public Act 374 of 1996 specifies that all court workers in probate and circuit courts are employees of the county, so those workers, regardless of whether they perform services in the probate or circuit court, will not change employers.

### **Opposing Argument**

The bills are simply a first step toward merging the constitutionally created separate trial courts. By combining jurisdictional areas into one division of circuit court, the bills, in effect, circumvent the Constitution's establishment of separate and distinct trial courts, without the approval of a constitutional amendment.

**Response:** While some people have advocated eliminating the probate and district courts, and merging them with the circuit court into one trial court, the bills do not attempt to meld them together. Instead, some jurisdictional areas of the probate court (e.g., wills and estates) will be left to that court, and the district court remains largely unchanged. Giving the family division of circuit court jurisdiction over some matters currently under the purview of the probate court simply consolidates related issues for purposes of efficiency and ease of use.

### **Opposing Argument**

The bills may represent an unconstitutional shift of court jurisdiction. Article VI, Section 15 of the State Constitution of 1963 grants the probate court original jurisdiction in all cases of juvenile delinquents and dependents.

**Response:** That section of the Constitution requires that the probate court's jurisdiction, powers, and duties be provided by law and specifies that the probate court has original jurisdiction in cases involving delinquents and dependents, except as otherwise provided by law. In addition, the convention comment on Article VI, Section 15 of the Constitution specifically states that the language of that section "will permit the legislature greater flexibility in the future in determining the best method within our court system for the handling of juvenile matters, *including the possibility of creating a family court*" (emphasis added).

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

**Senate Bills 1036, 1037, and 1039 to 1047 will have no fiscal impact.**

**The impact of Senate Bills 1052, 1054, and 1055 is indeterminate. Some provisions will provide savings to State or local government, while others will result in additional expenditures or administrative costs.**

### **Family Court**

The creation of the family court as a division of the circuit court might add some responsibilities for court staff while chief judges develop a plan for how the family court will be operated in each judicial circuit. The costs are indeterminate but not expected to be significant. The recommendations of the Trial Court Assessment Commission on the number of judges needed in the family court will have an indeterminate fiscal impact depending on whether a caseload review determines that more or fewer judges are needed.

### **District Court's Jurisdiction**

The impact of the expansion of the district court's jurisdiction in civil litigation is indeterminate. Senate Bill 1052 provides for a \$100 filing fee for cases worth over \$10,000 and under \$25,000. If these cases were within the jurisdiction of the circuit court, the filing fee would be the same effective October 1, 1997. The distribution of the filing fees is different in the district court, however, and this could mean more revenue for the funding unit or the State Court Fund as well as less revenue for the judges retirement system. The amount of the revenue or loss of revenue cannot be determined because it will depend on the number of cases worth between \$10,000 and \$25,000 that are filed in the district court as opposed to being filed in the circuit court before the bill. The number of cases filed is dependent on factors beyond the courts' control, and the value of the cases, which determines where they are filed, is subjective.

### **Accumulated Leave Time**

The State will incur some immediate liability for those transferred employees with accumulated leave time in excess of 160 hours. An earlier estimate of the value of the leave time was approximately \$2 million. The cost might be lower, however, depending on the amount of leave time

used since those estimates and before October 1, 1996. Accumulated leave below 160 hours will now be a liability of the new employer. Payroll services, which also will be the responsibility of the new employer, might result in some minimal administrative costs.

#### Judges' Salaries

Public Act 374 of 1996 provided for changes in the judges' compensation, with the State paying for judges' salaries at 100%. This liability to the State was estimated at approximately \$3 million. Senate Bill 1052 also increases a probate judge's salary to that of a circuit judge effective January 1, 1998. After a Supreme Court judge's salary reaches a certain level (as described in the **CONTENT**, above), the percentage of a justice's salary that trial court judges receive also changes. The effect of this change is a higher liability for the State, with the inverse effect of savings to the funding units. This change is estimated to be a cost of approximately an additional \$1 million to the State.

#### Court Equity Fund/Hold Harmless Fund

Senate Bill 1052 amends the RJA to provide for excess court fee contributions to judges' retirement to go into the Court Equity Fund. In order to provide for this, House Bill 6024 would have deleted the provision of the Michigan Judges Retirement Act that allocates these funds to the Court Fee Fund, but this bill was vetoed by the Governor. Had this provision not been vetoed, this change would have dedicated an estimated \$2 million to the Court Equity Fund. The Senate bill also includes juror fee reimbursements in the calculation of the amounts counties will receive from the Hold Harmless Fund. The effect of this, since the pot of money remains the same, is that those counties eligible to receive money from the Hold Harmless Fund will receive more funding from that Fund.

#### Retirement System

Senate Bill 1055 provides for changes in the retirement system for the former State-funded employees as well as bailiffs. The impact of these changes is indeterminate. The State will see some savings as it no longer will be the employer of these employees and therefore will not have to contribute the employer share of the retirement. This will now be the responsibility of Wayne County and the City of Detroit. These employees, however, will remain in the State Employees Retirement System (SERS). The costs to the city

and the county cannot be determined at this point as these employers have retirement systems that differ from the State's system. Wayne County and the City of Detroit will incur some administrative costs associated with the implementation of this bill due to the requirements for reporting to the SERS.

Fiscal Analyst: M. Ortiz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.